

REMARKS

Applicants gratefully acknowledge the Examiner's statement that the prior rejections have been withdrawn. In the Office Action mailed August 15, 2006, the Examiner now has rejected claims 1-4 and 7-23 under 35 USC 103 as being obvious over U.S. Patent No. 6,217,563 to Van Gompel, and claims 5 and 6 as being obvious over Van Gompel in view of U.S. Patent No. 5,836,930 to Lantz and U.S. Pub. No. US 2005/0027267 to Van Dyke respectively. Applicants respectfully disagree for at least the following reasons.

Claims 1-4 and 7-23:

Claims 1, 11, 17 and 20 each recite that "at least 70% of said second length [defined between first and second longitudinally spaced boundaries] is positioned between said centerline and said terminal front waist edge [of said body chassis], and wherein there is no absorbent material disposed longitudinally outside of said retention region defined between said first and second boundaries." In addition, the "second length is less than or equal to 50 % of said first length" defined between the terminal front and back waist edges of the body chassis. Applicants submit that the Examiner has failed to make out a *prima facie* case of obviousness for at least two reasons – (1) there is no suggestion to modify Van Gompel as asserted and (2) even if modified, not all of the recitations of the claims are disclosed (see MPEP 2143).

At the outset, Applicants note that, with respect to claims 1 and 11, the Examiner has failed to recite to any portion of Van Gompel disclosing or suggesting that the second length is less than or equal to 50% of the first length defined between the terminal waist edges of the body chassis, and correctly so. Indeed, even a cursory review of Van Gompel shows that the ratio between the second and first lengths is greater than 65% (*see, e.g.*, FIGS. 1, 2 and 4). Accordingly, claims 1-16 should be passed to allowance on this basis alone.

Applicants note that the Examiner makes a generalized statement with respect to claims 12, 17 and 20 at pages 7 and 8 of the Office Action that Van Gompel

“teaches that the lengths of the body panels collectively do not exceed 80% of the total article length, *therefore in embodiments where the insert terminal edges are substantially adjacent the terminal crotch edges of the panels*, the insert will contribute 20% of the length” (Office Action at 8)(emphasis added). Applicants submit that the Examiner’s assertions are not supported or suggested by Van Gompel.

First, the statement ignores the Examiner’s own prior assertions concerning the same claims that “the terminal edges of said first and second end portions . . . are also *longitudinally spaced* from the terminal crotch edges of the body panels” (Office Action at 6 and 8). Either the edges of the absorbent composite in Van Gompel are spaced from the crotch edges, or they are adjacent the crotch edges, but they can’t be both. Indeed, using the Examiner’s logic in arriving at the 20% length of the absorbent composite, the edges of the absorbent composite would need to be located immediately the terminal crotch edges of the body panels, not spaced therefrom as recited in claims 11 and 20.

Second, the Examiner has not provided any support for the statement that Van Gompel discloses that the absorbent composite edges are located *adjacent to the terminal crotch edges* of the body panels. Just because the body panels have a length of 80% of the overall length of the garment does not mean that the absorbent composite edges are terminated at, and secured to, the terminal crotch edges of the body panels. Indeed, as shown in FIGS. 1 and 6 of Van Gompel, there is an overlap of the absorbent composite and body panels, with the terminal edges of the absorbent composite spaced from the crotch edges of the body panel. Indeed, as noted above, the ratio between the length of the retention region relative to the overall length of the garment is *greater* than 65%.

Third, Van Gompel discloses that expandable sections 92 are connected to the body panels with side securements 42 and end attachments 44 (Van Gompel at Col. 16, line 40 to Col. 17, line 17). Accordingly, Van Gompel teaches an overlap between the absorbent composite 32 and the body panels such that the expandable portion 92 can be secured to the body panel for expansion (*see, e.g.*, Van Gompel at

Col. 2, lines 17-29 (“In particular, the expandable attachment sections which join the absorbent composite to the body panel can allow the absorbent composite to increase in volume during use while allowing the body panel to maintain a close and conforming fit around the waist and torso of the wearer’s body.”)) Accordingly, Van Gompel teaches away from the suggested modification, and the Examiner’s rejections should be withdrawn for this additional reason.

Applicants further note that the Examiner has acknowledged that “Van Gompel does not teach that at least 70% of the second length is positioned between the lateral centerline and the terminal waist edge of the front body panel” (Office Action at 3). Rather, the Examiner asserts that it would have been obvious to shift the insert such that the arrangement “would be more effective in absorbing urine insult, particularly for male users” (Office Action at 3).

Such analysis is classic, *impermissible* hindsight. *See In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 2004). Nowhere does Van Gompel disclose or suggest that urine absorbency for male users is of a particular concern. Accordingly, the Examiner’s purported motivation is found only by referring to Applicants’ invention.

Moreover, when referring to FIGS. 1, 4 and 6 of Van Gompel, it is apparent that any shift of the absorbent composite 32 to meet the “70%” recitation of Applicants claims would move the terminal edge of the absorbent insert 32 and the attachment locations 44 *beyond* the terminal edge 61 of the front body panel 53, which would change the very principles of operation of Van Gompel and render Van Gompel unsatisfactory for its intended purpose (MPEP 2143.01). Accordingly, Van Gompel teaches against such construction, further rebutting any suggestion to modify Van Gompel as suggested by the Examiner.

For all of these reasons, Applicants respectfully submit that claims 1-5 and 7-23 should be passed to allowance on the next Office Action.

Claim 6:

The Examiner rejected claim 6 under 35 USC 102(e)/103 as being obvious over Van Gompel in view of Van Dyke. Pursuant to 35 USC 103(c), Applicants,

through their undersigned attorney, do hereby state that the present application (S/N 10/693,555) and Van Dyke (US 2005/0027267) were, at the time of the invention of the '555 application was made, owned by Kimberly-Clark Worldwide, Inc.

Applicants have rewritten claim 6 in independent form. Accordingly, Applicants respectfully request that the Examiner withdrawn the rejection of claim 6 and pass claim 6 to allowance on the next office Action.

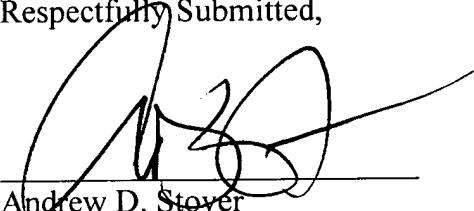
Conclusion:

Applicants have enclosed a check in the amount of \$200 for the additional independent claim. If for any reason this application is not considered to be in condition for allowance and an interview would be helpful to resolve any remaining issues, the Examiner is respectfully requested to call the undersigned attorney at (312) 321-4713.

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By:

Respectfully Submitted,


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